

Debbie Beadle

From: Reid Brockway <waterat@comcast.net>
Sent: Thursday, November 08, 2012 12:16 PM
To: ECA
Subject: Testimony to 11/8 ECA hearing
Attachments: Testimony to 11-8-12 PC mtg.docx; Roadmap for deliberation.docx; Summary of Testimony on Streams and Process V2.docx

Follow Up Flag: Follow up
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Please accept the attached three items as testimony to this evening's public hearing. Note that it is *not* necessary to distribute these to the Commissioners in advance of that hearing, altho there is no problem with doing so.

Thanks,
Reid Brockway

EXHIBIT NO. 241

Testimony to 11/8/2012 Planning Commission public hearing
From: Reid Brockway
Subject: Stream related issues in preliminary code draft

My focus, as I think you know, is streams. And this city has a lot of them. (Show map) This map shows 19 so-called “high value streams” flowing into Lake Sammamish. You probably recognize the map; it was posted last month. I’ve done my own survey and I believe there to be about 30 watercourses flowing into Lake Sammamish within city limits. Most of these will be considered Type F streams – the most protected category. About all it takes for that is that they flow into Lake Sammamish and be at least two feet wide bank-to-bank. And the homes along the lake tend to be on narrow lots, so the buffer associated with one of these can affect multiple lots. So a lot of residents are affected by this code.

I’ve studied the draft code changes the city has written, and here’s where I think things stand.

It appears the city is unwilling to abandon the application to developed urban neighborhoods of large, fixed-width stream buffers derived from forest practices. Combined with building setbacks, this creates bands of restricted land use ranging from 130 to 330 feet wide, sometimes reaching across multiple properties. These buffers are based on the state Forest Practices Board “water typing” definitions, which are somewhat crude and presume a relatively undisturbed forest or rural setting. (I’ve shown graphics of this in prior testimony.) These big buffers may be appropriate for raw land, but their application to dense urban neighborhoods can be arbitrary and burdensome, imposing restrictions on residents while providing no environmental benefit. (Prohibiting a resident from placing a garden shed 160 feet and two intervening houses away from an intermittent drainage that happens to meet the state’s definition of a Type F stream is absurd, but that’s what our code says, and so far that’s not being changed.)

There seems to be the determination, reflected in the direction Staff says they have to go, that if restrictions on property owners are relaxed, the environment must get something in trade. For example, if a home is allowed to be expanded in the direction of a critical area the property owner is required to submit a critical areas study showing “a net improvement in hydrologic and habitat values to the subject critical area(s)” despite – and this is a key point – despite whether the expanded footprint will have any effect whatsoever on the watercourse (or wetland). And how, for that matter, can that property owner improve a critical area that may be two doors down on somebody else’s property?

This use of code restrictions as leverage is a reflection of an activist environmental philosophy and agenda. It is saying: regardless of the fact that we are in an Urban Growth area and people are here to stay, we want to return pieces of it to a natural state, and we’ll use elements of critical areas code as bargaining chips to do that. That may or may not be Staff’s philosophy, but Staff is telling us that other agencies are requiring it of them. (That agenda is evident from both the DOE and WDFW reviews of our proposed wetland and stream related amendments, and the WDFW’s own policy document that the reviewer cites comes right out and says that.)

I submit that a key question the Commission should ask itself is whether it wants to endorse that agenda or stand up against it and defend our residents’ constitutional property rights. That is

what is really at stake here. We have the opportunity with this update to restore some balance in that regard. And we need to do it now, with this update, not prolong the inequities indefinitely.

Now as to where things stand at the moment... on Sunday I submitted a one-page assessment of the extent to which the five biggest problems that I have been bringing to your attention have been addressed in the code change draft. That shows that while this draft makes progress, it falls substantially short of the mark. I provide much more detail in a mark-up of these code changes containing my comments and suggestions, which I also sent on Sunday. I've met with staff previously and discussed these issues at length, so I'm a bit dismayed at how deficient the changes are. But I'll give Staff the benefit of the doubt – the intention may be there to solve these problems with the current draft, but the execution hasn't done it. I think my mark-up makes that pretty clear.

So to wrap this up... where do we go from here?

There is a formidable mass of testimony now on stream issues and related process. You told me you would revisit the testimony when doing your deliberations. That seems like a huge job considering the volume of testimony you've received (and not just from me). I've supplied an updated log of the public testimony that pertains to streams, and it now lists 32 items submitted over ten months. If you can wrap your mind around all that, that would be terrific.

But I think maybe I can help by providing some focus. I have submitted a one-page – what I'm calling a "roadmap" – that describes the essence of the problem with the stream code as I see it and suggests a manageable way of eating that elephant. It presents a substantially reduced list of exhibits and suggests an order in which to review them. When you deliberate on the stream issues I suggest that you refer to this roadmap. It won't make the task easy, but I think you will find it helps to limit the task and provide some structure.

So... happy deliberating. I really appreciate what you guys are doing!

There is a fairly large body of public testimony on stream-related issues¹. This roadmap is an effort to aid the Commission in its deliberations by first distilling that testimony down to the essence (as I see it), then suggesting a short-list of items of testimony to revisit and an order in which to do so.

The heart of the problem is the inappropriate application of large, arbitrary, fixed-width buffers derived from forest practices to developed urban neighborhoods where, due to the features or topography present, they may provide little or no environmental benefit. Their imposition prevents or impedes homeowners living near minor watercourses from doing things that are the unencumbered rights of other citizens. The band of restricted land use that results ranges from 130 feet to 330 feet depending on stream “Type”, which comes from the relatively crude “water typing” definitions adopted by the state Forest Practices Board.

If the city feels it must retain fixed width buffers based on water type, it can at least provide an alternative, which is to allow site-specific determination of true range of influence, referred to as “buffer delineation”. This method, based on science and common sense, is used by other jurisdictions and (despite claims to the contrary) is a viable approach. It is even supported by the WDFW’s own policy document cited in the WDFW comments received on proposed amendments 2-10 and 2-11 (see testimony submitted 10/31, Exhibit 233). And it is attractive for this ECA update in that it sidesteps many problems (such as “magic numbers” in the code) that should otherwise be addressed.

A key point that should not be overlooked is that although the city has dropped the three proposed amendments for streams that made the Major Items list in favor of a new amendment 2-14c, the new amendment, while constructive, is not a faithful representation of the others. I urge the Commission to review my mark-ups of amendments 2-10, 2-11, and 2-12 in the course of its deliberations.

The accompanying reduced list of items of public testimony is offered as the core set of documents I encourage the Commission to refer to in its deliberations. Other items from the total list (see Log, bottom of list) are, of course, fair game as well, as are items from other sources such as the DOE. But this short-list is still a substantial body of material and I believe adequately conveys the problems, proposed solutions, and status given the current code draft.

The topical groupings in the short-list are presented in the order in which it makes sense to review them. The exception is References, which items are intended to be referred to as needed.

Thanks in advance to the Commission for giving serious attention to these materials in its deliberations.

¹ See updated log, “Summary of Public Testimony on Streams and Process”, submitted 11/8/12

Short-List of Public Testimony Related to Streams

General background

- 4/19 Exhibit 73 Charts: Observations on Code Associated with Streams
5/8 Exhibit 122 Known Topics List for ECA code update (addresses primary objective)

Main discussion of the issues and recommended solutions

- 5/2 Exhibit 105A Recommended solutions for ECA issues related to streams

Proposed amendments / evaluation forms

- 9/16 Exhibit 210 Mark-ups of evaluation forms for amendments 2-10 and 2-12
9/20 Exhibit 214 Mark-up of evaluation form for amendment 2-11
9/28 Exhibit 218 Assessment of viability of merging amendments 2-10, 2-11 & 2-12
10/31 Exhibit 233 Critique of state agency reviews of proposed amendments 2-10, -11 & -12

Public Hearing Draft code changes

- 11/4 Exhibit 235 Assessment of 10/26/12 draft code treatment of stream-related problems
11/4 Exhibit 235 reb mark-up of 10/26/12 draft code changes

Reference

- 10/4 Exhibit 224 Excerpts from Aberdeen's ECA code related to buffers and delineation
11/8 Exhibit TBD Text of verbal testimony presented at Nov. 8 hearing
11/8 Exhibit TBD Log of public testimony on streams and process (master list)

Summary of Public Testimony on Streams and Process

Updated 11/8/2012

Date/Exhibit	Subject	Significance
Feb. 16 Exhibit 17	Citizens For Sammamish offering of goals for each of the Known Topics	Citizen effort to guide policy in ECA update process in interest of fairness and balance
March 15 Exhibit 43	ECA consultant products	Critique of initial reports produced by AMEC, pointing out their lack of specificity as to science and legal bases
April 5 Exhibit 60	Tally of quantitative requirements in ECA code (tabulation of 89 such)	Many seemingly arbitrary "magic numbers" in the code. Encourages city to determine the BAS, legal citations, and peer jurisdiction comparisons for these.
April 5 Exhibit 61	Administrative issues relating to ECA code	Identifies three issues: - Need for an ombudsman function - Inconsistency in grandfathering provisions - Presence of "red tape" requirements
April 19 Exhibit 73	Significant issues with ECA code related to streams	Identifies six major problems with the current code and its administration and discusses each. Includes appendix assessing grandfathering provisions.
April 19 Exhibit 73	Charts: "Observations on Code Associated with Streams"	Presentation on the two main problems with the current stream regulations, providing examples, and offering solutions
April 20 Exhibit 73	Email to Gurol and eca regarding April 19 testimony	Provides citations to code basis for elements in citizen/staff dialogue dramatization
May 2 Exhib. 105A	Recommended solutions for ECA issues related to streams	Proposes solutions to each of the six major problems identified in April 19 testimony
May 8 Exhibit 122	Testimony to joint meeting of PC and CC regarding Known Topics list	Makes a case for fixing the inequities that exist in the code today, not leaving them to burden our citizens for years to come. Promotes buffer delineation as an attractive work-around solution.
May 17 (no exhibit)	Verbal testimony questioning status of two of the six stream-related issues	Reminder to PC that grandfathering and ombudsman issues need follow-thru even tho they did not make the Major list
June 13 Exhibit 133	Email to Commissioners, subject: Questions on ECA process	Four questions about the public's ability to review and challenge or provide substitutes for Staff's versions of amendments
June 14 (no exhibit)	Verbal testimony and two charts with questions about process	Given statement in Staff memo that Staff will be researching and assessing the Major amendments, asks four questions about public's role going forward
July 16	Response to PC request for	Recommends changes to evaluation forms

Exhibit 171	feedback on Evaluation Forms and major/minor item list (Brockway email)	and that a structured approach be devised for capturing relevant factors for Minor items as well
Sept. 6 Exhibit 200	Critique of content of evaluation forms for amendments 2-10, 2-11 & 2-12	Identifies general problems with Staff's versions of these evaluation forms
Sept. 13 No exhibit	List of watercourses flowing into Lake Sammamish within city limits (provided to Staff)	Lists 25 examples, many representative of the problem posed by large buffers on all Type F streams
Sept. 16 Exhibit 210	Mark-ups of evaluation forms for amendments 2-10 and 2-12	Alternatives to Staff's versions
Sept. 18 Exhibit 211	21A.15.1240 definition of "stream"	Reference material for PC use in considering stream related amendments
Sept. 18 Exhibit 211	Overview of restrictions associated with streams	Reference material for PC use in considering stream related amendments
Sept. 20 Exhibit 214	Mark-up of evaluation form for amendment 2-11	Alternative to Staff's version
Sept 20 Exhibit 213	Testimony to 9/20 PC meeting	Brief reference to the four items above – Exhibits 210, 211 (2) & 214
Sept. 28 Exhibit 218	Assessment of viability of merging amendments 2-10, 2-11 & 2-12	Response to PC request. Identifies benefits and limitations of merging with respect to three major problems
Oct. 3 Exhibit 221	Summary of testimony on streams and process	Prior version of this document
Oct. 4 Exhibit 224	City of Aberdeen wetland buffer delineation map	Example of buffer delineation performed by another city
Oct. 4 Exhibit 224	Excerpts from Aberdeen's ECA code related to buffers	Example of how another city handles buffer delineation in their code
Oct. 17 Exhibit 227	Email exchange between Reid Brockway and Evan Maxim concerning draft evaluation form for new amendment 2-14c	Provides insight into the adequacy of 2-14c as an alternative to 2-10, 2-11 & 2-12
Oct. 17 Exhibit 231	Comment to PC on Amendments 2-10, 2-11 & 2-12 vis a vi 2-14c	Appeals to PC not to drop the 2-10, 11 & 12 until it can be determined if 2-14c is an adequate replacement
Oct. 31, Exhibit 233	Critique of state agency reviews of proposed amendments 2-10, 2-11 & 2-12	Provides four reasons why the DOE and WDFW opposition to these amendments should be discounted
Nov. 4 Exhibit 235	Assessment of 10/26/12 draft code revision treatment of stream-related problems	One-page summary addressing extent to which the draft solves the five key stream-related problems previously brought to PC's attention
Nov. 4 Exhibit 235	Mark-up by reb of 10/26/12 draft code changes adding comments and editorial fixes	Reveals unresolved problems with stream-related code, and associated policy issues. Recommended as central object of PC deliberations in this regard.

Nov. 8 Exhibit 235	Roadmap for stream-related code amendments	Background and suggested approach for PC deliberations on stream-related code
Nov. 8 Exhibit TBD	Text of verbal testimony presented at Nov. 8 hearing	Overview of where things stand, key policy issue, and introduction to roadmap
Nov. 8 Exhibit TBD	Summary of testimony on streams and process	This document